Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375
	)	

COMMENTS OF PAY TEL COMMUNICATIONS, INC.

Pay Tel Communications, Inc. ("Pay Tel"), by its attorneys, respectfully submits these comments in response to the *Notice of Proposed Rulemaking*, WC Docket No. 12-375 ("Notice"), released December 28, 2012, in the above-captioned proceeding.[1] In the Notice, the Commission grants two longstanding petitions for rulemaking filed by the Petitioners Martha Wright *et al*., seeking renewed comment on inmate calling services ("ICS") reforms generally and, specifically, whether the Commission should change its rules regarding rates for interstate interexchange calls at both public and private correctional facilities.

For the reasons expressed herein, the scope of the Commission's queries is dangerously narrow. Focusing primarily on the limited question as to the appropriateness of rate caps on interstate interexchange calls represents a classic case of failing to see the forest for the trees.

[1] Pay Tel, founded in 1986, is one of the nation's leading inmate telephone service providers, serving county confinement facilities in North Carolina, Georgia, Virginia, South Carolina, Tennessee, Florida, Washington, Kansas, Missouri and Ohio. Pay Tel was the first inmate calling services provider, beginning in 1991, to offer customer service dedicated solely to serving inmates' families and was the first inmate calling services provider, also beginning in 1991, to offer in-house billing and prepaid calling plans. Pay Tel's founder and president, Vincent Townsend, is a recognized expert on fraud prevention in public communications and served for over twenty years as the payphone industry's representative on the former Telecommunications Fraud Prevention Committee of the Alliance for Telecommunications Industry Solutions. Pay Tel has previously submitted comments in this proceeding.

Rather, the Commission must consider all aspects of ICS—interstate and intrastate, at all kinds and sizes of correctional facilities—as it engages in reform.

Background

The debate about which the Commission seeks comment is nearly a decade old. In 2003, the Wright Petitioners filed a petition for rulemaking ("First Wright Petition") seeking structural reform of ICS.[2] The Wright Petitioners primarily sought a Commission rule to require private prison administrators to offer multiple ICS provider options to inmates. However, the First Wright Petition was expressly limited to "inmate telephone services at private prison facilities,"[3] and Petitioners sought structural reform entirely in the context of long distance services.

Then, in 2007, seemingly concerned that their "initial 'structural' approach" raised too many "legal, technical, and engineering cost issues," the Wright Petitioners filed an alternative rulemaking proposal ("Alternative Wright Petition").[4] In the Alternative Wright Petition, Petitioners essentially asked the Commission to establish benchmark rates for all interstate, interexchange ICS with limits of "no more than $0.20 per minute for debit calling and $0.25 per minute for collect calling."[5]

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[2] *See* Martha Wright *et al.*, Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128 (filed Nov. 3, 2002) ("First Wright Petition").

[3] First Wright Petition at 4 n.4.

[4] Martha Wright *et al.*, Petitioners' Alternative Rulemaking Proposal, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128 (filed Mar. 1, 2007) ("Alternative Wright Petition") at 4.

[5] Alternative Wright Petition at 5.

Now, motivated by a "wide disparity"[6] among interstate ICS rates, "significant public interest concerns",[7] and "tens of thousands"[8] of consumer complaints, the Commission seeks to refresh the record and, potentially, to reform ICS. To the extent the Commission proceeds with such reform, however, it must—as a matter of statutory requirement and rational policymaking—look at the entirety of the existing regulatory structure rather than just one isolated piece as the Petitioners urge.

I. The Notice Inappropriately Focuses Only on the Issue of Interstate Rates, Which Represents Merely One, Narrow, Limited Aspect of the Complex, Interrelated ICS System

Pay Tel acknowledges the earnest efforts of Petitioners to reform the existing rate structure applicable to interstate ICS rates. However, any reform of ICS requires a holistic approach that analyzes impacts on the overall ICS industry, rather than the piecemeal strategy employed here that looks at one, insular aspect and tackles it in isolation. To the extent reform efforts are undertaken, they must be comprehensive, considering all aspects of local and non-local, intrastate and interstate calls at both prisons and jails, which have radically different calling environments. Any reform should, at a minimum, ensure that all rates (including intrastate rates): (1) are compensatory to ICS providers and fair to consumers, as mandated by Section 276 of the Communications Act; and (2) are structured in such a manner as to deter "rate arbitrage" and "rate shopping". To achieve meaningful reform consistent with the stated goals, all aspects of the ICS environment must be addressed, including, for example, service fees and related charges that increase consumers' calling costs and reduce commission revenues realized

[6] *See In the* Matter *of Rates for Interstate Inmate Calling Services,* 27 FCC Rcd 16629, ¶ 1 (2012) (hereinafter, the "Notice").

[7] *Id.*

[8] *Id.* at 16660 (statement of Commissioner Mignon L. Clyburn).

by correctional facility operators. The very nature of ICS, which the Notice correctly recognizes is "unique" for a number of reasons (including the myriad and serious security considerations inherent in the service),[9] requires this all-encompassing approach. So, too, do federal law and Commission precedent.

Section 276 of the Communications Act of 1934 (the "Act") demands this holistic view, mandating that all payphone providers, including ICS providers,[10] be "fairly compensated *for each and every completed intrastate and interstate call* using their payphone . . . ."[11] The statute does not permit looking at interstate calls in a vacuum while ignoring intrastate calls. The Commission itself has recognized this requirement in its previous orders. In its February 21, 2002 *Order on Remand and Notice of Proposed Rulemaking*, in considering an ICS provider coalition's request for relief from below-cost local collect calling rate caps, the Commission declined to require that every call make an identical contribution to shared and common costs, thereby necessitating a review of all calls—including local and long distance—to determine whether the fair compensation requirements of Section 276 had been met.[12] The Commission concluded:

> [T]he critical factor is that the costs must ultimately be recovered, but we will not mandate a particular method of cost recovery. Unless an ICS provider can show that (i) revenue from its interstate or intrastate calls fails to recover, for *each* of these services, both its direct costs and some contribution to common costs, or (ii) the *overall* profitability of its payphone operations is deficient because the provider fails to recover its total costs from its aggregate revenues (including both revenues from interstate and intrastate calls), then we would see no

[9] *Id.* at ¶¶ 5–6.

[10] *See* 47 U.S.C. § *276*(d); Notice at ¶ 49.

[11] *See* 47 U.S.C. § 276(b)(1)(A) (emphasis added); Notice at ¶ 49.

[12] *See In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 3248, ¶ 23 (2002) (hereinafter "*ICS Order & NPRM*").

> reason to conclude that the provider has not been "fairly compensated."[13]

In other words, the Commission declined to either preempt state rate caps on local collect calls, or permit ICS providers to collect an additional per-call surcharge above state rate caps, because it believed such providers would be able to cumulatively recover their costs through *both* interstate and intrastate call revenues in the *aggregate*.[14] In doing so, the Commission effectively allowed ICS providers to charge more for interstate calls in order to make up for their inability to recover costs on certain intrastate calls—rather than remedying the underlying problems associated with below cost rate caps on intrastate local calls.

The Commission has thus intentionally fostered a system in which interstate rates might subsidize intrastate rates, the latter of which do not—on their own—"fairly compensate" ICS providers in compliance with Section 276.[15] For example, many states maintain local rate caps that are well below any reasonable forecast of ICS costs—e.g., for a 15-minute local call, North Carolina caps rates at $1.71.[16] Other states have similar caps which preclude full cost recovery. Addressing interstate rates in isolation at this time is therefore untenable; it would undermine and throw into chaos the scheme the Commission helped create, in which Section 276's "fair compensation" mandate is only met thanks to this symbiotic structure wherein low intrastate rates might be offset by higher interstate charges. It is unreasonable to deny ICS providers relief from below-cost, state-imposed intrastate rates because of the providers' failure to prove overall revenues are not satisfactorily compensatory and, in the same breath, to potentially lower

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[13] *Id*.

[14] *Id*. at ¶¶ 23–24.

[15] *See, e.g.*, Letter from Marcus W. Trathen, Counsel for Pay Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (Dec. 9, 2008), at 3 n.5.

[16] Source: Technologies Management, Inc., Rates for a 15 Minute Inmate Local Collect Call With Any State-Imposed Rate Ceiling (March 13, 2013).

interstate rates without consideration of that same, overall (interstate plus intrastate) revenue picture. Any consideration of interstate rates must necessarily include consideration of intrastate rates, as well as consideration of the rest of the entire ICS system.[17]

II. Addressing Only Interstate ICS Rates May Jeopardize ICS Service in Local Jails and Will Promote Rate Shopping and Arbitrage

The Commission itself recognizes that interstate, interexchange calls, while making up a small portion of all inmate calls, are generally the most expensive types of calls.[18] With respect to the latter point, the Commission asks whether, because interstate calls are often the priciest, establishing a rate benchmark would "be effective in helping lower the costs of contact between inmates and their families."[19] Whether establishing benchmarks for interstate calling would result in a reduction in total charges to consumers is uncertain in an environment where other rates remain unregulated (e.g., intrastate intraLATA and interLATA long distance calls and calling service fees), as providers will undoubtedly be incented to recover lost revenues through other avenues. Just as important, it must be recognized that the Commission's prior choice not to preempt below-cost intrastate rates is a primary reason for current interstate rates. In any case, because of the current overall rate scheme, any interstate rate benchmark might potentially

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[17] There is no question but that the Commission has jurisdiction over intrastate inmate calling rates. In enacting Section 276, Congress unambiguously granted the FCC authority "to establish regulations 'to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call.'" *Ill. Pub. Telecomm. Ass'n v. FCC*, 117 F.3d 555, 562 (D.C. Cir. 1997) (citation omitted). In the payphone service provider context, the Commission's authority pursuant to that statutory command has been construed such that the Section 276(b)(1)(A) "fair compensation" requirement includes the rates paid for local coin calls because they are part of the compensation that payphone service providers receive for their services; accordingly, the Commission's authority extends to regulating such rates. *Id*. ("[T]here is no indication that the Congress intended to exclude local coin rates from the term 'compensation' in § 276 . . . we hold that the statute unambiguously grants the Commission authority to regulate the rates for local coin calls.").

[18] *See* Notice at ¶¶ 8, 50.

[19] *Id.* at ¶ 8.

cripple some ICS providers, particularly companies where local calls are the majority of the call traffic.

Statistics support this concern. For example, Pay Tel has analyzed its 2012 calling data for all jail facilities. The data show that, of all revenue calls, 84% were local calls, but those calls generated only 66% of that year's revenue.[20] The disproportionately high impact that interstate calls have on ICS providers' bottom lines—indeed, on their ability in some cases to continue as going concerns, is obvious.

To reiterate, the Commission has stated that Section 276's "fairly compensated" directive would not be met in a scenario in which an ICS provider failed to recover its total costs in the aggregate.[21] Generally, "interstate rates for inmate calling services are significantly higher than intrastate rates . . . ."[22] Consequently, many ICS providers lose money on every local call, and the existing federal approach is to balance local losses with revenues from other types of calling. As such, establishing benchmarks for interstate rates necessarily requires reviewing the current costs and revenue structure of intrastate calls. Appropriately, the Commission must set rates for below cost intra-state rates that fairly compensate ICS providers.[23]

Moreover, only tackling interstate rates will undoubtedly lead to the "rate arbitrage" and "rate shopping" that raise critical security and fraud concerns. Adopting a federal benchmark for interstate calls—in isolation—would certainly reduce interstate long distance rates, but it would

[20] By contrast, the majority of calls in prisons are long distance calls.

[21] *See ICS Order & NPRM*, at ¶ 23; Notice at ¶ 9 (explaining that the Commission has concluded that Section 276 does not require either preemption or an additional surcharge).

[22] Notice at ¶ 34.

[23] *Id.* (suggesting the possibility of adopting an "intrastate-interstate parity principle that would require that rates for interstate, long-distance calls not exceed rates for intrastate, long-distance calls"); *id.* at ¶ 50 (seeking comment regarding how to "encourage states to reevaluate their policies regarding intrastate ICS rates" in recognition of the fact that interstate, interexchange calls make up but a fraction of all ICS calls).

do so without impacting the already-low intrastate rates. This will give consumers the incentive to take advantage of readily available technology (e.g., VoIP or prepaid cellular phone service) in order to obtain phone numbers associated with interstate jurisdictions and receive the corresponding benefits of cheaper calls (a/k/a "rate arbitrage" or "rate shopping"). Indeed, Exhibit 1 (attached hereto) shows a comparison, from publicly available sources, of calling data from ICS in prisons. The comparison shows the change in calling patterns in prisons from 2007, when Pay Tel last submitted data. The data shows that 23.3% of calls at those prisons are local calls today, up substantially from 5.2% in 2007.[24] This extraordinary increase in the percentage of local calls is likely due, in large part, to rate arbitrage: consumers recognized that, due to intrastate rate caps, substituting low cost local calls for higher interstate calls through technologies like prepaid wireless phones would substantially reduce costs.[25]

This dynamic is occurring across all of Pay Tel's ICS facilities. Indeed, according to Pay Tel's analysis of its calling patterns, approximately 80% of all inmate calls today in Pay Tel-served facilities are placed to wireless numbers.

Rate arbitrage and rate shopping have serious security implications. Facility officers must exercise control and surveillance over calls inmates place, and they need the identity and location of the called parties in order to effectively accomplish this. Rate arbitrage makes it very difficult to confirm that vital information, creating a security risk for corrections officials. *See*

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[24] *See* Comments of Pay Tel Communications, Inc., CC Docket No. 96-128 (filed May 2, 2007), at Exhibit 1.

[25] Another form of arbitrage is the rise of businesses that provide families a local number for a fee so the family will be paying for local calls, regardless of the true nature of the underlying calls. Companies with business plans of this nature include ConsCallHome, Coldcribcommunications.com, Cheapjailcalls.com, Countyjailcall.com, Prisoncallsonline.com, Callear2ear.com, Inmatetollbusters.com, and Saveonprisoncalls.com. The emergence of schemes like these further illustrates that the Petitioners' proposal to address only one, limited aspect of ICS inherently leads to unintended results with serious security risks as the ultimate owner of ICS accounts is more easily masked with such tactics.

ICS NPRM, at ¶ 41. *See also* Ex Parte Presentation of Alliance for Telecommunications Industry Solutions ("ATIS"), CC Docket No. 96-128 (Aug. 24, 2007) ("If the FCC were to implement significant rate reductions on interstate calls only, the result would be disparate intrastate and interstate rates. This rate differential would create a significant incentive for arbitrage as family members of inmates obtain prepaid cellular telephones and voice over IP (VoIP) telephones with telephone numbers associated with a state different from the one where the family member resides. This would be rational economic behavior; however, it would have negative consequences for safety and security in confinement facilities.").

Rate shopping creates additional burdens as well; specifically, the likelihood of fraud increases along with it because, frequently, the called party associated with the VoIP or locale-specific cellular service is either unknown, or the account information given to the ICS provider is fictitious.

Given these concerns, in addition to the statutory command of Section 276, rational regulatory policy would dictate a comprehensive approach that would alleviate the dislocations that would be caused by a piecemeal approach.

III. The ICS Environment in Local Jails is Vastly Different from that in Large State and Federal Prisons and Treating All Correctional Facilities as if They are the Same is a Flawed Approach

Another aspect critical to taking a holistic view of ICS comes in recognizing that not all correctional facilities are created equal. Nor are all ICS providers. It is improper to paint either (all facilities or all providers) with one broad brush. Accordingly, certain providers might feel the negative impacts of any rule made as result of separate consideration of interstate ICS more acutely than other providers.

As might be expected, larger providers—which tend to focus their services on large state-run prisons and "mega" jails—would likely be able to withstand imposition of an interstate benchmark rate (presuming the rest of the ICS ecosystem maintains the status quo) with greater ease than a provider, like Pay Tel, which has a different focus. To take a specific example of the disparate impact here, consider that larger providers generally can negotiate a deeply discounted rate to access and obtain high-volume, special access circuits to interconnect with the LEC's central office, which ultimately saves providers money in the long run. Conversely, providers like Pay Tel, serving small and medium sized jails, often cannot access such circuits and instead use more costly broadband circuits in rural locations, which are much more expensive over time.

To argue, as the Wright Petitioners have, that federal benchmarks "would have an extremely small impact on service providers in . . . jails"[26] improperly characterizes all providers as one and the same, which could not be further from the truth. While no provider would welcome a low interstate benchmark created in isolation, such action might marginally hurt some providers, while it would devastate and drive out of business others. This disparate impact reinforces the underlying argument: the proper analysis here considers the *entire* ICS world.

These differences are driven by inherent and fundamental differences between prison and jail calling. As stated above, most calls in local jails are local calls, while most calls in prisons are long distance calls. In addition, ICS providers in jails are typically required to provide free calls for inmates in booking—to any number, local or long distance—and ongoing free calls to public defenders. And ICS providers must provide a way for inmates to speak with family members that have cell phones, VoIP or CLEC numbers, which entails significant additional expense. Pay Tel's patented solution is to provide all inmates a "First Call Free" to any new

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[26] *See* Dawson Reply Declaration at ¶ 20.

number so the inmate can inform the family member of his arrest, make bond arrangements, etc., and then Pay Tel connects the called party to a live customer service representative (who is available on a 24/7/365 basis) to answer questions, discuss account options, and assist the called party in setting up an account to receive future calls. Obviously, there are significant expenses associated with establishing each individual account with the assistance of a live CSR and with permitting free calls.[27] Much of these costs are avoided in a prison environment where prisoners may have debit or Trust Account[28] accounts which they may utilize to make phone calls.

Given these concerns, in any reform of ICS, the Commission must be mindful of the potential for disparate impacts on particular components of the industry.

IV. The Costs Incurred by ICS Providers

In the Notice, the Commission seeks comment regarding the cost study put forward by the ICS providers,[29] and it also asks for updated ICS cost and rate data.[30]

The Wood Study, submitted on behalf of various ICS providers in 2008, utilized the "marginal location analysis" previously developed and approved by the Commission to calculate payphone rates[31] to arrive at certain cost determinations that satisfy Section 276's "fair

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[27] Nearly three-quarters of the total calls from Pay Tel jails are either free calls or calls where Pay Tel must establish a billing relationship with the billed party. 12.9% of Pay Tel's total calls are free calls (including both First Call Free calls and free calls to public defenders). 62.1% of Pay Tel's total calls are prepaid collect or direct bills calls, where individual accounts must be set up with each recipient of collect calls. *See* Exhibit 2.

[28] When an inmate is moved to a prison there is a period of time during which the inmate is allowed to complete a list of numbers for calling, the numbers are investigated and approved for calling and the owner of the number is provided information on the prison website about establishing an account to receive calls or provide funds to the inmate to open a Trust Account to use to fund calls.

[29] Notice at ¶ 25.

[30] *Id.* at ¶ 43–44.

[31] The marginal location analysis is meant to find the rate structure at which a provider's costs are covered and such provider earns a reasonable return, without paying a commission to correctional facilities.

compensation" mandate.[32] As the Commission notes, the Wood Study demonstrated costs including a fixed per-call cost of $1.56 with a per-minute cost of $0.06 for debit calls, and a fixed per-call cost of $2.49 with a per-minute cost of $0.07 for collect calls, applicable to all ICS providers.[33]

With the caveats described herein, the Wood Study, and the analysis underlying it, generally remains a valid baseline for assessing ICS costs in accordance with the FCC's mandated cost development methodology. However, the following factors should be taken into account in evaluating the continuing applicability of the Wood Study.

First, as set forth in the Wood Study, the costs noted therein were calculated without consideration of commissions to facility owners. However, as noted in the Wood Study itself, commissions do represent a valid element of cost as they serve to defray the real costs incurred by facility owners in permitting and administering ICS. *See* Wood Study, at 9 (distinguishing facility administration fees from true "commissions"; "at most locations [facility administration fees] represent a means of recovery of the costs incurred by the confinement facility to operate and administer telecommunications facilities for inmates"). When these costs are appropriately factored in, the overall costs of ICS are higher than those presented in the Wood Study. *See id.* ("A complete and accurate calculation of ICSP costs should include an analysis of the amount of any payment to a confinement facility that represents a facility administration fee (i.e., a pass through of costs from the confinement facility to the inmates in the form of an increased charge for calling services provided by an ICSP) rather than a payment analogous to a "commission" payment made to a location owner by a public payphone provider.").

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[32] *See* Don J. Wood, *Inmate Calling Services: Interstate Call Cost Study*, CC Docket No. 96-128 (filed Aug. 15, 2008); *ICS NPRM* at ¶ 24–25 ("Wood Study").

[33] Notice at ¶ 24. The Commission rightly points out that the ICS Provider Proposal's estimates would be higher if high-cost facilities are included in the data. *Id.* at n.6.

Second, Pay Tel notes that the Petitioners argue that telecommunications costs are decreasing.[34] Pay Tel has examined its current costs relative to those previously submitted and found that some costs have increased and others have decreased, the net effect of which is a negligible change in overall costs incurred. Since the Wood Study was developed, consistent with general industry trends, Pay Tel's business model has shifted from a "customer premises" model to a "centralized platform" model. The location of the company's resources has shifted along with the business model, and there are now substantially more assets and personnel at the company's main Data Center location and its disaster recovery site—and fewer assets at individual correctional facilities—than used to be the case. This is in large part due to a market environment that is increasingly technologically sophisticated, and it has led to significant cost-shifting. Specifically, general and administrative costs, including investments in administration, support, and personnel resulting from the deployment of advanced technology and the creation and maintenance of millions of individual customer accounts have increased dramatically. On the other hand, capital costs for on-site equipment have seen a significant decrease.

Third, an entirely new area of cost for ICS providers that has arisen since the preparation of the Wood Study concerns the integration of ICS with other inmate systems. Jail officials today are requiring ICS providers to integrate their systems with other services such as commissary ordering and internal and external messaging. With the integration, the inmate can check his trust fund balance, place a commissary order, transfer money, and make a phone call. With the messaging service, the inmate can check court dates, bond requirements, visitation schedules, report grievances, and request medical assistance. The same messaging service can answer similar questions for family members who call from outside the facility. The

[34] *Id.* at ¶ 29.

implementation of these integrated systems requires ICS providers to incur real costs that must be considered, as these new services are being provided at no additional cost to the inmate or his family.

Finally, as noted above, many county jails (but not prisons) are now requiring that certain calls be permitted on a "free" basis. Today the volume of these non-revenue calls in many of these facilities are approximately 13% of total calls, which puts a direct cost burden on the ICS provider. *See* Exhibit 2 (attached hereto). Further, in facilities requiring the integration of ICS with commissary ordering, many facilities require free commissary calls which can drive the percentage of non-revenue calls in those facilities up to 50% of the total calls. These are costs that were not factored into the Wood Study, but they are real and legitimate components of ICS today.

Accordingly, while the analysis and approach taken in the Wood Study remains valid today, the developments discussed above must be taken into account in any current analysis of ICS costs.

V. Additional Fees Charged by Many ICS Providers Should Be Addressed

Further support for the contention that any review of interstate interexchange ICS calls must in fact be a *complete* review of inmate calling services analyzing all aspects of local and non-local calls at prisons and jails comes by looking at the problem of fees that providers charge consumers. These additional service and account fees are a significant—and growing—problem in the ICS industry. They drive up consumers' expense and also reduce facility revenues available for commissions. As operating margins have been squeezed by a variety of factors, some ICS providers have resorted to charging consumers a variety of service or account fees to create a separate source of income that is not shared with the correctional facility clients. The number of these fees is increasing as they appear to have fallen into a regulatory “black hole”—receiving virtually no regulatory scrutiny at either the federal or the state level. The amount of these fees ranges from reasonable amounts designed to cover actual costs for licensing third party specialized technology to extraordinarily high amounts designed to create a separate revenue source for the ICS provider.

Examples of these fees include payment processing fees, bill processing fees, direct billing cost recovery fees, validation surcharges, wireless administration fees, universal service administration fees, other service-specific service charges, local non-subscriber charges, and carrier cost recovery fees. Some of these fees reflect out-of-pocket licensing expenses incurred by ICS providers in furnishing additional specialized technology such as voice biometrics. However, most of these fees appear to simply reflect providers’ recovery of internal operational costs, and others appear to include negotiated mark-ups which are retained by the provider.

These additional fees represent a very real cost to consumers. In some cases, they may more than double the overall cost of every call. Many providers have tariffed additional recurring customer fees applicable to certain calls or to each month’s service. These multiple fees reduce the number of calls any individual can afford to accept. In addition to the account fees, high payment processing fees (which are frequently not tariffed) to fund prepaid accounts further increase the true cost to the consumer. The net effect of high payment processing fees and multiple account charges can be to reduce by 50% or more the budget available to each family to pay for actual phone calls. The net result is that the *real* cost of calls is often doubled for the family.

Such fees also reduce the commissionable revenue to correctional facilities. Although some vendors offer commission rates as high as 80%, the facility is really only receiving 80%

on, in some cases, less than 50% of the total funds families have spent to receive these phone calls. When half of the family budget for phone calls is diminished by these fees, the facility is also short-changed because commissions are only paid on call revenue—not on fees, which are collected for the benefit of the ICS providers alone.

While the Notice contemplates problems associated with providers' passing high facility *commissions* onto consumers through higher call rates,[35] it appears to fail to consider the concerns that these fees raise. The FCC must address such concerns—any interstate (or other) rate relief will lack meaning and impact if these additional fees are not part of the equation because ICS providers will compensate for interstate rate caps by raising these fees on the very same inter-state customers.

[35] *See, e.g., ICS NPRM* at ¶¶ 5, 7, 37.

Dated: March 25, 2013

Respectfully submitted,

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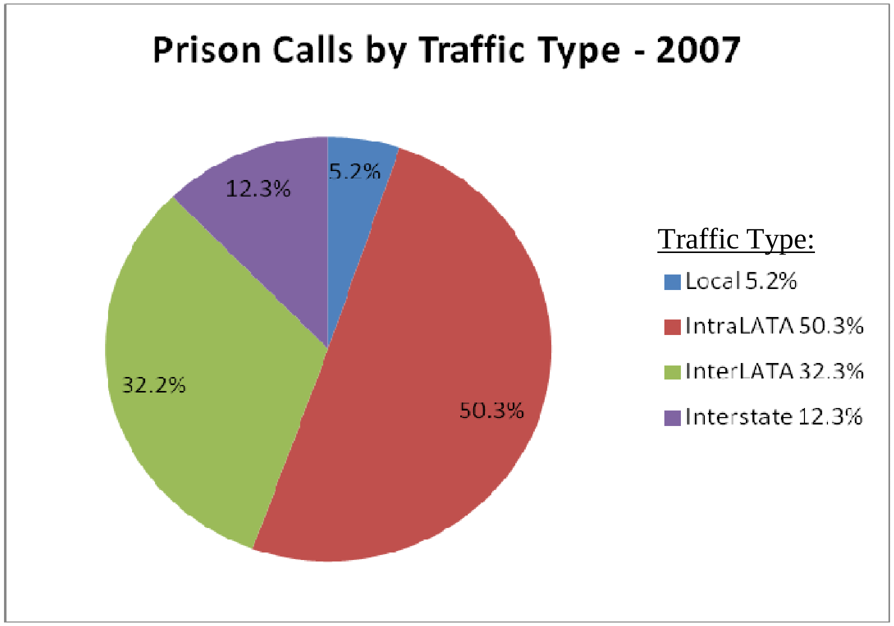
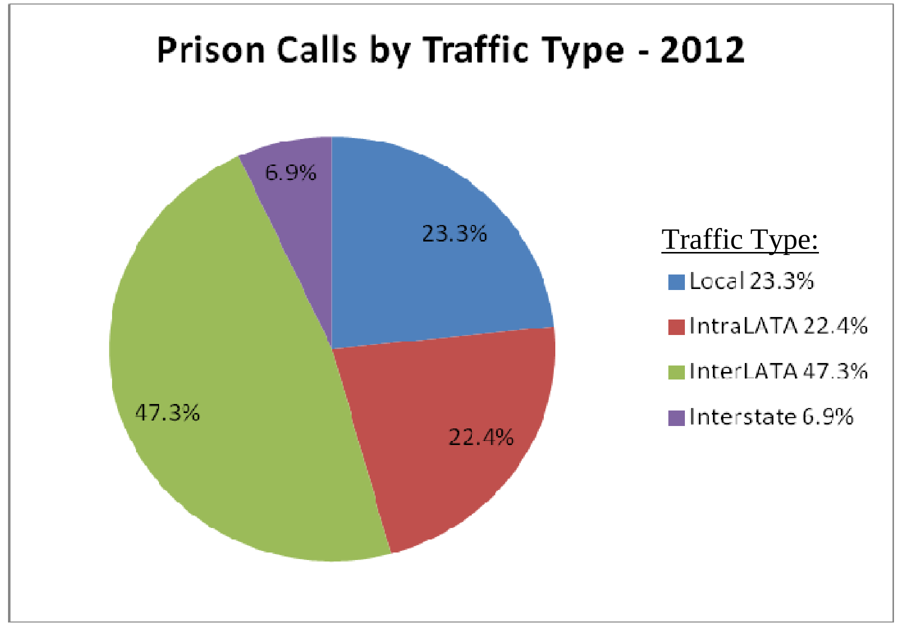
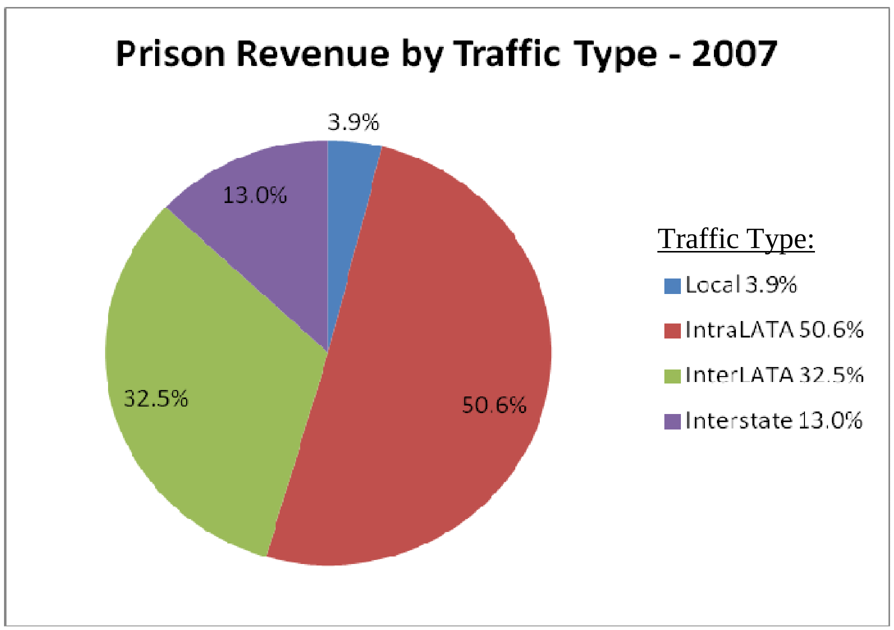
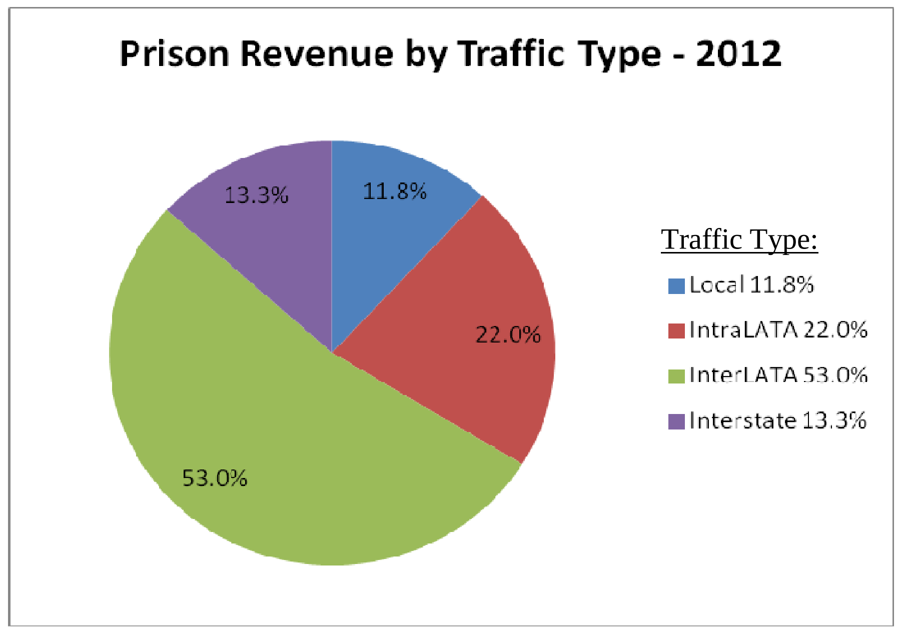
Exhibit 1
Prison Call Type and Revenue Comparison – 2007 & 2012









Source: Publicly available data

Source: Data from 2012 Prison ICS RFPs from GA, KS, & KY DOCs

Exhibit 2

Call Distribution By Billing Platform